

#### Article 4.

##### Prohibited Acts and Enforcement.

##### **§ 131F-20. Prohibited acts.**

It is unlawful for any person to:

- (1) Violate or fail to comply with the requirements of this Chapter.
- (2) Act as a fund-raising consultant or solicitor after the expiration, suspension, or revocation of that person's license.
- (3) Enter into any contract or agreement with or employ a fund-raising consultant or solicitor unless that fund-raising consultant or solicitor is licensed by the Department.
- (4) Knowingly file false or misleading information in any document required to be filed with the Department or in response to any request or investigation by the Department or the Attorney General.
- (5) Make misrepresentations or misleading statements to the effect that any other person sponsors or endorses the solicitation, approves of its purpose, or is connected therewith, when that person has not given written consent to the use of that person's name.
- (6) Represent that a contribution is for or on behalf of a charitable organization or sponsor, or to use any emblem, device, or printed matter belonging to or associated with a charitable organization or sponsor, without first being authorized in writing to do so by the charitable organization or sponsor.
- (7) Use a name, symbol, emblem, device, service mark, or statement so closely related or similar to that used by another charitable organization or sponsor that the use would mislead the public.
- (8) Falsely state that the person is a member of or a representative of a charitable organization or sponsor or falsely state or represent that the person is a member of or represents law enforcement officers or emergency service employees.
- (9) Misrepresent or mislead anyone by any manner, means, practice, or device to believe that the person on whose behalf the solicitation or sale is being conducted is a charitable organization or sponsor, or that any of the proceeds of the solicitation or sale will be used for charitable or sponsor purposes.
- (10) Represent that a charitable organization or sponsor will receive a fixed or estimated percentage of the gross revenue from a solicitation campaign greater than that identified in filings with the Department under this Chapter, or that a charitable organization or sponsor will receive an actual or estimated dollar amount or percentage per unit of goods or services purchased or used in the charitable or sponsor sales promotion that is greater than that agreed to by the coventurer and the charitable organization or sponsor.
- (11) Use or exploit the fact of registration or the filing of any report with any governmental agency to lead any person to believe that the registration in any manner constitutes an endorsement or approval by the State. However, use of the statement required in G.S. 131F-9(c) or G.S. 131F-17(a)(3) is not a prohibited use or exploitation.
- (12) Make misrepresentations or misleading statements to the effect that the donation of a contribution or the display of any sticker, emblem, or insignia offered to contributors shall entitle a person to any special treatment by

emergency service employees or law enforcement officers in the performance of their official duties.

- (13) Solicit contributions from another person while wearing the uniform of an emergency service employee or law enforcement officer, or while on duty as an emergency service employee or law enforcement officer, except where the solicitation is for a charitable organization or sponsor or except when soliciting contributions to benefit an emergency service employee or law enforcement officer who has been injured in the line of duty or to benefit the family or dependents of an emergency service employee or law enforcement officer who has been killed in the line of duty.
- (14) Solicit contributions on behalf of another person using any statement that the failure to make a contribution shall result in a reduced level of law enforcement services being provided to the public or the person solicited.
- (15) Employ in any solicitation any device or scheme to defraud or to obtain a contribution by means of any deception, false pretense, misrepresentation, or false promise.
- (16) Notify any other person by any means, as part of an advertising scheme or plan, that the other person has won a prize, received an award, or has been selected or is eligible to receive anything of value if the other person is required to purchase goods or services, pay any money to participate in, or submit to a promotion effort.
- (17) Fail to provide complete and timely payment to a charitable organization or sponsor of the proceeds from a solicitation campaign or a charitable or sponsor sales promotion.
- (18) Fail to apply contributions in a manner substantially consistent with the solicitation.
- (19) Fail to identify the professional relationship to the person for whom the solicitation is being made.
- (20) To send to any person a writing which simulates or resembles an invoice unless the intended recipient has contracted for goods, property, or services from the charitable organization or solicitor who sends the writing. (1981, c. 886, s. 1; 1993 (Reg. Sess., 1994), c. 759, s. 2.)

#### **§ 131F-21. Violation as deceptive or unfair trade practice.**

Any person who commits an act or practice that violates any provision of this Chapter engages in an unfair trade practice in violation of G.S. 75-1.1. (1993 (Reg. Sess., 1994), c. 759, s. 2.)

#### **§ 131F-22. Criminal penalties.**

Except as otherwise provided in this Chapter and in addition to any administrative or civil penalties, any person who willfully and knowingly violates a provision of this Chapter commits a Class 1 misdemeanor. (1981, c. 886, s. 1; 1993, c. 539, s. 952; 1993 (Reg. Sess., 1994), c. 759, s. 2.)

#### **§ 131F-23. Enforcement.**

(a) Investigation. – The Department may conduct an investigation of any person whenever there is an allegation or appearance, either upon complaint or otherwise, that a violation of this Chapter or of any rule adopted or of any order issued pursuant to this Chapter has occurred or is about to occur.

(b) Subpoena Power. – The Department may issue and serve subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of all books, accounts, records, and other documents and materials relevant to an examination or investigation. The Department, or its duly authorized representative, may administer oaths and affirmations to any person.

(c) Court Action. – In the event of substantial noncompliance with a subpoena or subpoena duces tecum issued or caused to be issued by the Department, the Department may petition the superior court of the county in which the person subpoenaed resides or has the principal place of business for an order requiring the subpoenaed person to appear and testify and to produce any books, accounts, records, and other documents as are specified in the subpoena duces tecum. The court may grant injunctive relief restraining the person from collecting contributions and any other relief, including the restraint by injunction or appointment of a receiver, or any transfer, pledge, assignment, or other disposition of the person's assets, or any concealment, alteration, destruction, or other disposition of subpoenaed books, accounts, records, or other documents and materials as the court deems appropriate, until the person or organization has fully complied with the subpoena or subpoena duces tecum and the Department has completed its investigation or examination. The court may also order the person to produce a financial statement that has been audited by an independent certified public accountant. Costs incurred by the Department to obtain an order granting, in whole or in part, a petition for enforcement of a subpoena or subpoena duces tecum shall be taxed against the subpoenaed person and failure to comply with the order shall be contempt of court.

(d) Violations. – The Department may enter an order imposing one or more of the penalties set forth in subsection (e) of this section if the Department finds that a charitable organization, sponsor, fund-raising consultant, or solicitor, or their officers, agents, directors, or employees have engaged in any of the following acts:

- (1) Violated or is operating in violation of any of the provisions of this Chapter or of the rules adopted or orders issued under this Chapter.
- (2) Made a false statement in an application, statement, or report required to be filed under this Chapter.
- (3) Refused or failed, after notice, to produce any records or to disclose any information required to be disclosed under this Chapter or the rules adopted by the Department.
- (4) Made a false statement in response to any request or investigation by the Department or the Attorney General.

(e) Penalties. – Upon a finding as set forth in subsection (d) of this section, the Department may enter an order as follows:

- (1) Imposing an administrative penalty not to exceed one thousand dollars (\$1,000) for each act or omission which constitutes a violation of this Chapter or a rule or an order.
- (2) Issuing a cease and desist order that directs that the person cease and desist specified fund-raising activities.
- (3) Refusing to register or cancelling or suspending a registration.

- (4) Placing the registrant on probation for a period of time, subject to such conditions as the Department may specify.
- (5) Issuing of a letter of concern.
- (6) Cancelling an exemption granted under G.S. 131F-3.
- (f) Procedures. – Except as otherwise provided in this section, the administrative proceedings which could result in the entry of an order imposing any of the penalties specified in subsection (e) of this section are governed by Chapter 150B of the General Statutes.
- (g) Disposition of Penalties. – The clear proceeds of penalties provided for in subsection (e) of this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1993 (Reg. Sess., 1994), c. 759, s. 2; 1998-215, s. 81.)

#### **§ 131F-24. Civil remedies and enforcement.**

(a) Civil Remedies. – In addition to other remedies authorized by law, the Attorney General may bring a civil action in superior court to enforce this Chapter. Upon a finding that any person has violated this Chapter, a court may make any necessary order or enter a judgment, including a temporary or permanent injunction, a declaratory judgment, the appointment of a master or receiver, the sequestration of assets, the reimbursement of persons from whom contributions have been unlawfully solicited, the distribution of contributions in accordance with the charitable or sponsor purpose expressed in the registration statement or in accordance with the representations made to the person solicited, the reimbursement of the Department for attorneys' fees and costs, including investigative costs, and any other equitable relief the court finds appropriate. Upon a finding that any person has violated any provision of this Chapter, a court may enter an order imposing a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) per violation.

The clear proceeds of penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Attorney General. – The Attorney General may conduct any investigation necessary to bring a civil action under this section, including administering oaths and affirmations, subpoenaing witnesses or material, and collecting evidence.

(c) Voluntary Compliance. – The Attorney General may terminate an investigation or an action upon acceptance of a person's written assurance of voluntary compliance with this Chapter. Acceptance of an assurance may be conditioned on commitment to reimburse donors or to take other appropriate corrective action. An assurance is not evidence of a prior violation of any of this Chapter. Unless an assurance has been rescinded by agreement of the parties or voided by a court for good cause, subsequent failure to comply with the terms of an assurance is prima facie evidence of a violation of this Chapter. (1993 (Reg. Sess., 1994), c. 759, s. 2; 1998-215, s. 82.)

#### **§§ 131F-25 through 131F-29. Reserved for future codification purposes.**